

		MA 402-1
Department of Public Health and Human Services	Section:	RESOURCES
	Subject:	Countable & Excluded Resources
MEDICAL ASSISTANCE		

**Supersedes:** MA 402-1 (01/01/08)

**References:** ARM 37.82.101, .903; 42 CFR 435.601; 20 CFR 416 Subpart L; 42 U.S.C. 1396p; P.L. 109-171; P.L. 109-432

► GENERAL RULE--The equity value of all resources (real and personal property) owned by the filing/assistance unit are countable unless specifically excluded by regulation. Resources in which the filing/assistance unit has a beneficial interest are also countable. Certain resources may be excluded if found to be inaccessible.

► No exclusions listed in this section will be applied to property a filing or assistance unit does not own, nor to the use of such property except by owners who are members of the filing or assistance unit. This includes *but is not limited to* property which a filing or assistance unit does not own but is owned by or held in:

1. a trust of any kind (whether or not any member of the filing/assistance unit is a trust beneficiary or a trustor),
2. a corporation of any kind (whether or not any member of the filing/assistance unit is a corporate shareholder),
3. a partnership of any kind (whether or not any member of the filing/assistance unit is a partner),
4. a limited liability company of any kind (whether or not any member of the filing/assistance unit is a member of the company), or
5. any other legal entity, instrument, device or arrangement of any kind by which a filing or assistance unit does not own the property.

See MA 402-3 for information regarding trust-owned resources.

**ALIEN'S SPONSOR'S RESOURCES** The income and resources of the alien's sponsor and sponsor's spouse are deemed to be available to the

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sponsored alien (refugees do not have sponsors) until such time as the alien:

1. Achieves U.S. citizenship through naturalization, or
2. Has worked 40 qualifying quarters.

For details of how to deem resources, see MA 400.

## ANNUITIES

Annuities are contracts or agreements that, in exchange for lump sum payments, provide for the payment of annuitized income at regular intervals (i.e., monthly, quarterly, annually, etc.) Code in the system using the appropriate resource code based on the source of the annuity.

The value of an annuity is determined by multiplying the total annual payments by the period of the annuity remaining on the date for which value is being determined. If the period of the annuity is based on an annuitant's lifetime, the annual payments are multiplied by the annuitant's life expectancy per the table in MA 008. If the annuity is a "period certain" annuity, then annual payments are multiplied by the annuitant's life expectancy or the period certain, whichever is less. A letter from the annuity company stating that the annuity has no value is simply a statement of the company's contractual obligations regarding cash value and is irrelevant to the true market value of the annuity. There is a thriving secondary market for annuities; even non-assignable annuities can be sold. The calculated value of an annuity may be rebutted by providing verified purchase offers from sources in the legitimate business of buying annuities.

Annuities are countable resources when:

1. Owned by the Medicaid applicant/recipient or an eligible spouse but make payments to anyone else, or have not been annuitized, or any other requirement for exemption (1-6 below) is not met; or

**NOTE:** An *eligible spouse* is the ABD spouse of a Medicaid applicant/recipient where neither spouse is institutionalized or waiver. If one member of a couple is institutionalized or waiver (or waiver eligibility is being determined), the applicant/recipient's spouse (whether ABD or not) is a *community spouse*.

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2. Owned by ineligible spouses, community spouses or deemed parents, even if periodic scheduled payments are being made, and regardless of to whom the payments are made.

If an annuity meeting the above criteria is shown to be legally inaccessible, then the annuity should be evaluated under the general uncompensated asset transfer policy.

Annuities owned by the Medicaid applicant/recipient or an eligible spouse are excluded resources if:

**NOTE:** An *eligible spouse* is the ABD spouse of a Medicaid applicant/recipient where neither spouse is institutionalized or waiver. If one member of a couple is institutionalized or waiver (or waiver eligibility is being determined), the applicant/recipient's spouse (whether ABD or not) is a *community spouse*.

1. Periodic scheduled payments are being made to the Medicaid applicant/recipient or eligible spouse;
2. The periodic scheduled payments are being made on at least an annual basis;
3. Payment contract calls for equal payments; no balloon payments;
4. The payment schedule is actuarially sound (equal payments must be based on full payout of the contract within the annuitant's life expectancy---see "Actuarially Sound" in glossary).
5. The annuity is irrevocable; and
6. The annuity is non-assignable.

If all of the criteria above are not met and the annuity was purchased or converted on or after February 8, 2006, the annuity is a countable resource and must also be evaluated to determine if an uncompensated asset transfer occurred.

Annuities purchased or converted prior to February 8, 2006 that do not meet items 1 through 6 above are considered countable resources.

An annuity is converted if the annuity is changed. Examples of conversion include, but are not limited to, actions such as annuitizing a previously un-annuitized annuity or changing

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an annuity from one type of annuity to another. Automatic events such as the start of pre-arranged payments or other actions taken by the annuity company that are not voluntary on the part of the annuity owner are not considered conversions.

Annuities purchased or converted by the Medicaid recipient or community spouse on or after February 8, 2006 must be changed prior to Medicaid nursing home/waiver coverage approval or redetermination to name the State of Montana Medicaid Program as the residual beneficiary of the annuity, in the following order:

1. Community spouse;
2. A minor child;
3. A blind or disabled adult child;
4. State of Montana Medicaid Program.

No individual or entity other than those mentioned above may be named as a beneficiary in a position superior to the State of Montana Medicaid Program. A community spouse cannot name the institutionalized spouse as a residual beneficiary of the annuity in a position superior to that of the State of Montana Medicaid Program.

If an annuity is not amended to meet these criteria, the annuity purchase will be treated as an uncompensated asset transfer. See MA 404-1.

Annuities purchased on or after February 8, 2006 and within the asset transfer lookback period by either the nursing home spouse or the community spouse, which do not meet the criteria above will be evaluated under uncompensated asset transfer rules at MA 404-1.

An individual retirement annuity [subsection (b) of section 408 of the IRS Code of 1986], a qualified employer plan annuity [subsection (q) of section 408 of the IRS Code of 1986], or purchase of an annuity with an IRA, employer or employee association account, or a qualified salary reduction arrangement [section 408(a), (c), or (p) of the IRS Code of 1986] or a simplified employee pension [within the meaning of section 408(k) of the IRS code if 1986] will not be considered an uncompensated asset transfer (provided the payments are made to the owner of the above-named account or arrangement) or require beneficiary assignment

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to the State of Montana Medicaid Program. If an individual alleges one of these situations, gather documentation and request assistance from the regional policy specialist in determining whether the criteria are met. Individual retirement annuities above may be countable or excluded resources, however, according to provisions earlier in this section (who owns them, actuarially sound, assignable, etc.).

Payments being received from an annuity may be countable unearned income. See 'Annuity Payments' in MA 501-1.

### **BASIC MAINTENANCE ITEMS**

Known as household goods and personal effects; these are items essential to day-to-day living such as clothes, jewelry (limit of one wedding ring and one engagement ring per individual), any prosthetic devices, furniture and other similar items of value including a home computer and satellite TV dish. Basic maintenance items are excluded resources.

If a household also owns **item(s) of unusual value**, these are not considered to be part of household goods and personal effects. See 'Items of Unusual Value'.

### **BONDS**

Bonds, including United States savings bonds and Treasury bills, notes, and bonds, are countable.

To determine the value of government bonds, contact a securities dealer. If the bonds can be cashed, value can be provided. If bonds cannot currently be cashed, set an alert on the system for 30 days prior to maturity date.

If the bonds are physically held by a joint owner who refuses to surrender possession of the bonds to the individual, the bonds are excluded as inaccessible because the bonds must be presented in order to be cashed.

### **BURIAL ACCTS/ CONTRACTS & EXCLUSIONS**

Burial accounts (bona fide funeral agreements) that exceed \$1500 equity value per agreement are countable in full, unless the funds are invested in an irrevocable funeral agreement.

Funeral agreements that are inaccessible to the household or are irrevocable are excluded from resources.

A funeral agreement/contract is excluded if:

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1. Both the participant and the funeral home representative have signed the agreement;
2. The price of all major services is specified;
3. The total dollar amount of the agreement is specified;
4. The participant was neither a minor nor legally declared incompetent when the agreement was signed;
5. The agreement specifies in writing that the money is not refundable under any circumstances; AND
6. The contract complies with 53-6-169 MCA (i.e., if the funeral agreement balance exceeded \$5000, any funds not expended for the funeral expenses are payable to Montana Medicaid within 30 days).

Certain otherwise countable resources may be excluded for burial. These resources must be separately identifiable and set aside for burial expenses, and may not be commingled. They include:

1. Life insurance, if the total face value of all life insurance owned by the individual is \$1500 or less.
2. Funds in an irrevocable burial trust (see MA 402-3) or contract (see above for irrevocable burial contract definition).
3. A maximum of \$1500 per individual set aside in an account if designated by account title or via signing HCS-470 "Burial Designation". This \$1500 exclusion is reduced by the face value of ordinary life insurance whose cash surrender value has been excluded, as well as by the value of any burial trusts or contracts or other resources designated for burial. The \$1500 exclusion is not reduced by the value of burial plots. These funds are excluded effective the date they are designated as burial funds. Any funds (interest or principal) that are later withdrawn from an excluded burial fund will be considered income to the individual in the month after the month in which the withdrawal is discovered by/reported to OPA.

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Example: Jane signs HCS-470 designating a \$1000 savings account for burial. Jane also owns life insurance with total face values of \$1200 and cash values of \$800, which is excluded due to #1 above. \$300 of the designated savings account is excluded as a resource (\$1500 total exclusion – excluded life insurance face value = additional available designation amount). The remaining \$700 in the designated burial account is a countable resource.

4. Any interest earned on an account designated for burial which is left to accumulate and become part of the burial fund is excluded as income and as a resource. Do not enter the accumulated interest onto the system as income.

**NOTE:** Funds may be designated for each member of a household.

#### **BURIAL PLOT**

Exclude the value of one burial space for each family member (e.g., spouse, child, parent, sibling, etc.), whether living in the home or not. Burial plots are real property for conditional assistance purposes (if a single individual has two burial spaces, but no family member to designate the second burial space to, for example).

#### **BUSINESS CHECKING ACCOUNT**

Funds held in a business account that represent necessary business capital, operating funds or funds prorated as income are excluded. However, funds that have not already been prorated as income that are diverted from this account to cover personal expenses must be counted as earned income to the participant.

Funds in a business account that are **not** necessary for business operation or prorated as income are countable assets of the business owners. See 'Commingling' and 'Funds Prorated as Income' for more information.

Example: Farmer sells his crops in August for \$12,000. The money from the sale is intended to support his family for a year. The \$12,000 is prorated as income, \$1,000 per month. The \$12,000 (even if put into a bank account with other funds) is excluded as a resource for the one-year period.

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If funds have not been prorated as income, see 'Property/Equipment Necessary for Employment'.

**CAMPER**

Campers which were not manufactured with the intent of providing transportation; camper trailer, pick-up topper etc., are countable unless otherwise excluded.

**CASH ON HAND**

Countable, unless it represents income received during the current month, in which case it is excluded in the month of receipt.

**CERTIFICATE OF DEPOSIT (CD)**

CDs are countable. The value of a certificate of deposit is the net amount that could be received after penalties for early withdrawal, if applicable. Taxes are not deducted in determining net value.

Determine the net value of a CD via a detailed breakdown from the institution holding the deposit. The breakdown must include the gross deposit, and individually identify any/all deductions and penalties that would be deducted from the gross if the funds were withdrawn.

**CONTRACT FOR DEED**

The value of a contract for deed is an excluded resource if:

1. The written terms of the contract include at least annual payments to the contract owner by the purchaser of the property;
2. The terms of the contract are being met;
3. The contract does not include provisions for the contract to end or for payments to be forgiven or terminated at any point other than for payment in full or foreclosure by the contract owner; and
4. The Medicaid recipient shall irrevocably assign and transfer to Montana Medicaid any interest the recipient has in the contract upon and after the Medicaid recipient's death.

**NOTE:** Montana Medicaid will not retain payments that exceed the total amount of Medicaid benefits paid on behalf of the recipient(s).

If the written terms of the contract for deed are not being met, the applicant is required to exhaust all available legal



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recourse to enforce the terms of the contract in order to be found eligible for Medicaid.

If the written terms of the contract for deed do not include provisions for at least annual payments made to the contract owner by the purchaser, the unpaid balance of the contract or highest purchase offer from a knowledgeable source will be considered an available resource, unless the terms of the contract prohibit sale. If such a contract was entered into within the Medicaid transfer lookback period, evaluate the contract under the transfer of assets provisions in MA 404-1. If the payer makes an unscheduled lump sum payment toward the contract principal, the unscheduled payment is considered income in the month received and a resource thereafter, to the extent retained.

**Refer to MA 501-1 for information regarding income from a contract for deed.**

**CREDIT UNION ACCOUNTS**

Countable, unless otherwise excluded (i.e., account contains self-employment income that has already been prorated as income).

**CRIME VICTIM COMPENSATION**

Crime Victim Compensation Act payments (P.L. 103-322) are excluded.

**DEDUCTIONS FROM MILITARY PAY**

Mandatory deductions from military pay for educational purposes (to fund the GI Education Fund) while the recipient is enlisted are excluded. (P.L. 99-576)

**DISASTER & EMERGENCY ASSISTANCE**

Funds received as a result of a presidentially declared disaster (P.L. 100-707) or a result of a major disaster or emergency as per the Disaster Relief and Emergency Assistance Amendments of 1988 are excluded. See also 'Fire or Casualty Insurance Proceeds' in this section.

Exclude any governmental disaster payments designated for restoration of a home damaged in a disaster if the household is subject to legal sanction if funds are not used as intended. This includes some, but not all, Federal Emergency Management Agency (FEMA) payments.

These funds must also have been excluded as income in order to meet this resource exclusion. Any interest earned on excluded funds is also excluded; see MA 501-2.

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**DOMESTIC  
VOLUNTEER  
SERVICES ACT**

Although payments to volunteers in the RSVP, Foster Grandparents, SCORE, and ACE programs funded through this act are excluded as income when received, the funds become countable resources if retained into the month following receipt.

**EDUCATIONAL  
INCOME**

All educational income is excluded as a resource, including Title IV, BIA, VA, Work Study for post-secondary education. The individual must be enrolled in school and attending classes to be considered a student. Eligibility case manager should verify this and document case notes. See MA 401-1, 'Commingle'.

**FAMILY SELF-  
SUFFICIENCY  
ESCROW ACCTS**

Funds which are held in an escrow account during the household's participation in a HUD (Department of Housing and Urban Development) Family Self-Sufficiency Program are excluded.

When the household is given the funds, the money is excluded from income.

**FIRE or CASUALTY  
INSURANCE  
PROCEEDS**

Cash benefits received as proceeds of fire or casualty insurance claims to make repairs to or dispose of damaged property are treated as follows:

A settlement is only excluded as a resource if the payment is for the replacement or repair of an excluded resource. If the payment is for a non-excluded resource, the settlement is also a non-excluded resource. If the payment is excluded as income, it can continue to be excluded as a resource for up to nine months. An extension of up to nine additional months may be allowed if there is verifiable good cause for a delay in the replacement or repair of the damaged or destroyed resource.

**HOME AND  
SURROUNDING  
PROPERTY/LOT**

The home and surrounding property that is not separated from the home by intervening property owned by others is excluded when determining Medicaid resource eligibility. Public rights of way, such as roads that run through the surrounding property, will not affect the exclusion of the property.

Only one home that is the individual's principal place of residence is excluded as a resource. See MA 0-4 "Glossary" for the definition of principal place of residence.

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A home may continue to be the individual's principal place of residence, even though the individual is temporarily absent from it, so long as they have lived in the property within the past six months and they plan to return to it after an absence of no more than six months. Examples include those temporarily away as students, migrant workers, those away for medical treatment, temporarily residing in a nursing home, etc. A home will also be excluded as the principal place of residence if it is newly purchased and the applicant/recipient has not yet moved in (i.e., newly purchased mobile home that must be set up prior to owner moving in).

**NOTE:** The principal place of residence resource exclusion applies if the individual's spouse or dependent minor or disabled adult child is lawfully residing in the residence.

Temporary absence and intent to return home must be documented in the case file with a signed statement from the client or individual with authority to act on the client's behalf, that indicates the reason for the absence, the length of the absence and if s/he intends to return to that home. This statement is sufficient to exempt the home for up to six months as long as the home continues to meet the requirements of a principal place of residence, including that the individual has resided in the property within the past six months.

Land that is contiguous to the property on which the permanent place of residence is located is excluded as part of the home property. Land on which the individual intends to build or is building is countable.

One vehicle used as a home may be excluded. Document in case notes.

**A nursing home or waiver applicant cannot receive Medicaid coverage of nursing home or waiver benefits if he or she has home equity in excess of \$500,000,** regardless of intent to return home or whether he or she is still living in the home (waiver). If a community spouse or a minor or disabled adult child is lawfully residing in the home, this limitation will not apply.

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Example: Joe, a widower, applies for Medicaid for coverage of his nursing home care in October. Joe entered the nursing home from his own home in June. Joe's home and contiguous property has a fair market value of \$500,010, and there are no liens on the property. Joe states that he intends to return to live in his home. The property can continue to be considered Joe's home for up to six months from June, when he last lived there, through November. However, because Joe has more than \$500,000 equity in his home, he is ineligible for nursing home or waiver benefits, even though it can still be considered his home for October and November and excluded as a resource. Joe could decide to stop claiming the property as his home, and instead list the property for sale and utilize conditional assistance to achieve eligibility for the month of application and future months, if he chooses, or (if possible) take out a reverse annuity mortgage and pay his own nursing home expenses. He can only use conditional assistance to overcome the home equity limit if he stops claiming the property as his home.

#### **INCOME PRODUCING PROPERTY**

**For property used in a trade or business (i.e., farming), see 'Property/Equipment Necessary for Self-Employment.'**

Income producing property is non-liquid property used in the passive production of income (i.e., not a business/trade). It may include such property as rental property (when the person is not in the business of managing rental properties), a non-working ownership in a business venture, or leased land in which the owner is not actively participating in the operation and decision-making of the business for at least 10 hours per week. If the owner is participating at least 10 hours per week throughout the year, claims the endeavor is self-employment, and, if filing income taxes, reports the income on Schedule C, F or SE, the property is treated as property/equipment necessary for a self-employment business. Otherwise, the property is treated as income producing property.

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If non-self-employment property produces a minimum annual net income of 6% of its fair market value, \$6000 of the equity value may be excluded from the general resource limit. This \$6000 exclusion is applied to the total value of ALL income producing property combined except life estate property, which may be separately excluded. However, neither the 6% production test nor the \$6000 exclusion limit apply to resources that are used to produce items for home consumption or are part of a self-employment enterprise.

#### **INDIVIDUAL DEVELOPMENT ACCOUNT (IDA)**

IDAs may be established by or on behalf of an individual eligible for TANF cash assistance. IDAs are created and funded through periodic IDA contributions by an individual and matched by or through a not-for-profit organization or a state or local government agency in cooperation with such an organization. The purpose of the account is to enable an individual to accumulate funds for post-secondary education, first home purchase or business capitalization.

An individual's contributions on deposit in an IDA are excluded as resources. Matching funds, interest paid and disbursements for qualifying purposes are excluded as income and as resources. Emergency withdrawals are considered loans (and are therefore exempt as income). Not all states allow emergency withdrawals.

#### **ITEMS OF UNUSUAL VALUE**

Countable. See also Basic Maintenance Items. Vehicles are not considered items of unusual value.

#### **LAND IN CRP**

Land in the Conservation Reserve Program (CRP) may be considered either a countable or excluded resource.

1. If the individual is actively farming or ranching on land other than the CRP land, the CRP property may be excluded as property that is part of an earned self-employment business. See MA 503-1 for treatment of self-employment farm income.
2. When the individual is not actively farming or ranching on land other than the CRP land (i.e., retired):
  - a. If the individual is in the business of renting property or is actively participating in the business at least 10 hours per week, the CRP property is considered an excluded resource as part of an earned self-employment business.

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- b. If the individual is not in the business of renting property or is not actively participating in the business at least 10 hours per week, the CRP property is subject to the \$6000/6% rule of "Income Producing Property" earlier in this section.

## LIFE ESTATES

A life estate is a property right with a duration limited to the life of the party holding it or to the life of some other party. The holder of a life estate does not have title to the property and cannot sell the property. However, the holder of a life estate can sell his/her interest in the property unless restricted by the terms of the contract (if sale is restricted, the value of a life estate is excluded), and is entitled to any income from the property. A simple property check may not reveal the presence of a life estate.

**NOTE:** Mineral or oil rights cannot be sold or leased without specific consent of the titleholder.

The life estate value is determined by multiplying the fair market value of the property by the percentage listed on the "Life Estate Interest Table" (MA 009) for the age of the individual on whose lifetime the life estate is based.

**NOTE:** If more than one person owns the life estate, the value is based on the owner with the longest life expectancy (i.e., the youngest owner).

A life estate will be excluded as the home while the property meets the definition of principal place of residence.

The value of a life estate may be excluded as a resource as long as the property is used to produce income consistent with the property's value. This exclusion may be applied to a life estate on:

- X A private residence that is not occupied by the life estate owner or his/her dependents, and does not meet the definition of principal place of residence, or
- X A business property, such as a ranch or commercial property.

For purposes of this policy, income consistent with the value of the property will be an annual net income of 6% of the fair market value of the property.

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**NOTE:** If the life estate property is business property (such as a ranch or other business property) and is excluded as a principal place of residence, if ANYONE is using the property as part of a business, the life estate owner must be receiving income for the use of the property (rental or lease income). If the life estate owner is not receiving income from the user, evaluate this as an uncompensated transfer of income, per MA 404-1.

Purchasing a life estate in another individual's home will result in an uncompensated asset transfer penalty. See MA 404-1. This uncompensated asset transfer penalty may be overcome by the purchaser living on the property as his/her principal place of residence for a period of at least one full year after the date of the purchase. An example of this would be for a nursing home individual to purchase a life estate in a daughter's home. Because the individual is currently residing in a nursing home and not expected to leave, this would be considered an uncompensated transfer.

► Life estates may be excluded if listed for sale under a conditional assistance period. For conditional assistance, a life estate is considered personal property, meaning the six month conditional assistance period applies.

## **LIFE INSURANCE**

Term life insurance policies are excluded resources.

Exclude the value of all ordinary (AKA "whole life" or "straight life") life insurance policies if the combined face value of all policies (excluding term policies) owned by an individual is \$1500 or less. If the combined face value of all policies owned by each individual exceeds \$1500, the cash value, as currently verified by the insurance companies (do not rely on cash value tables on the policies) is countable toward the resource limit.

**NOTE:** See 'Burial Exclusions' for a possible alternative to counting the cash value toward the resource limit.

## **► LIMITED LIABILITY COMPANIES (LLC)**

A limited liability company (LLC) is basically a hybrid between a corporation and a partnership. LLCs have "members" rather than stockholders, and the LLC may only have one member. Whether the LLC has one or more than one member, the company is treated as a corporation for resource purposes. Each member's proportionate interest in

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the LLC is a countable resource, just like corporate stock. The net value of the assets (assets less liabilities) of the company is divided among the members, according to documented individual interests. Unless there is an enforceable no-sell agreement, or the LLC interest can otherwise be shown to be inaccessible, the interest is a countable asset. As with any other asset, taking an action that would cause the LLC to be inaccessible (entering into a no-sell agreement, for example) would be evaluated as an uncompensated asset transfer.

## **LIVESTOCK**

The value of livestock necessary for employment or raised for home consumption is an excluded resource. Income received is countable self-employment income (MA 503-1). Livestock that are pets are also excluded.

Livestock that is used as non-business income-producing property is subject to the regulations listed under "Income Producing Property". Livestock owned in a non-business arrangement is often referred to as being "run on shares" by another individual.

## **LOANS GIVEN BY THE HOUSEHOLD/ PROMISSORY NOTE**

A promissory note or other loan given by an applicant or recipient is considered personal property (usually a liquid asset) and is countable, unless the note/loan is legally inaccessible. The lender holds legal interest and has the legal ability to make available his/her share in the note/loan. The equity value of the note/loan (the principal reduced by any third party lien) is countable.

If a household makes a loan that is considered inaccessible, or is shown to have a significantly lower market value than the unpaid balance of the loan, the loan will be considered to be an uncompensated transfer of assets (follow policy in MA 404-1, including rebuttal period). The uncompensated asset transfer will be considered to be the outstanding balance due on the loan as of the date of the lender's application for nursing home or waiver services.

Examples of loans which might be considered inaccessible or have significantly lower market value include, but are not limited to:

1. A loan that is not secured by a lien against property of equal or greater value than the loan amount.



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2. A loan that contains provisions for forgiving the loan upon the death of the lender (i.e., when the person loaning the money dies, the loan is considered paid in full).
3. The repayment terms of the loan are not "actuarially sound." For example, a loan that contains unreasonable repayment provisions, such as a \$10,000 loan with a repayment requirement of \$10 per month, which cannot be expected to be repaid within the reasonable lifetime of either the lender or borrower.
4. A verbal loan agreement.
5. The loan allows for sporadic, unequal, deferred, or balloon payments.

Also see MA 401-1, Inaccessible Resources.

**LOANS  
RECEIVED BY  
THE HOUSEHOLD**

Funds received as a loan which are retained into future months are counted as resources beginning with the month after they are received.

**LUMP SUM  
PAYMENTS**

Lump sum payments are considered income in the month received and a resource to the extent that they are retained into following months, unless otherwise excluded. Countable lump sum payments may include lottery winnings, gifts, gambling winnings, inheritance, etc.

Retroactive Social Security or SSI payments that are retained in bank accounts or as cash are excluded as resources for nine months after the month of receipt. (P.L. 108-203)

**MILITARY  
REENLISTMENT  
BONUS**

A military reenlistment bonus is countable unearned income in the month received, and a resource to the extent retained into the following months.

Military reenlistment bonuses can be paid either as a lump sum, or up to 50 percent of the bonus amount as an initial payment with the remainder paid in equal annual payments. It is up to the military service to decide which military grades/series get the bonuses and how much they will be. Each branch of the military service may have its own policy regarding payment of reenlistment bonuses. Eligibility case managers must verify what the payment policy is for the

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branch of service to determine if or when it should be prospected.

## **NON-HOME REAL PROPERTY**

The equity value of non-home real property, whether listed for sale or not, is a countable resource, unless the value of the property is determined to be inaccessible or is otherwise excluded. Land on which the individual intends to build or is building is countable.

In addition to the provisions defining inaccessible property listed in MA 401-1 "Inaccessible Resources," if two different knowledgeable sources in the geographic area agree that the property is not saleable because of a specific condition (refusals to purchase the resource by the knowledgeable sources alone do not meet this criteria), the real property listed for sale may be considered inaccessible.



Encumbrances against the property are considered in determining equity value. Medicaid liens are considered encumbrances if Lien & Estate Recovery Unit confirms the liens are currently enforceable. For example, Medicaid liens may not be enforceable if the Medicaid recipient has a surviving spouse or disabled (minor or adult) child; therefore the Medicaid lien does not encumber the property if there is a community, non-waiver, ineligible, or surviving spouse, or if the owner has a disabled child.

### **ALSO SEE CONDITIONAL ASSISTANCE PROVISIONS IN MA 402-4.**

## **OIL & MINERAL RIGHTS**

Oil and mineral rights may be included with land ownership or owned separately. If surface rights of the same property are excluded (for example, as the home), so are the oil and mineral rights. If an individual owns both surface rights and mineral rights on the same property, mineral rights are not entered as separate resources on the system.

Obtain verification of oil and/or mineral rights. Acceptable verifications are deeds, lease agreements, titles, and homestead documents. If mineral rights are producing income under a lease agreement, the owner may be constrained from selling or otherwise disposing of those rights. If the land is already excluded (for example, as the home), or the terms of the lease agreement do not allow sale, the oil and/or mineral rights are excluded.

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See 'Royalty' in MA 501-1, for oil and mineral right income.

Determine the equity value by obtaining the fair market value and subtracting encumbrances/liens (amount owed). The balance is the equity value. Document with system case notes and include a description of the property involved.

Fair market value may be obtained from a knowledgeable source (i.e., brokers in the geographical area, Bureau of Land Management, or companies who lease mineral rights).

Oil and mineral rights are considered personal property for conditional assistance purposes.

**PATIENT TRUST  
ACCOUNT OF A  
NURSING HOME/  
INSTITUTION  
RESIDENT**

A patient trust account is an account administered by a nursing home or similar facility to accommodate a patient's individual funds. Some patient trust accounts only hold a small amount of spending money while others hold all unspent funds of a patient for whom the facility is acting as payee or in some other way administers the patient's funds. Patient trust accounts are coded on the system as savings accounts and are countable resources.

**PERSONAL  
CHECKING  
ACCOUNT**

Countable. Income received in the current month is not counted as a resource. Therefore, if the income is deposited into a bank account, it is disregarded as a resource in the current month, but countable in any future months.

There is a two-step process in determining how much money in a checking account should be attributed to resources.

1. Follow existing policy to not count money as income and a resource in the same month. Therefore, the worker should exclude any current month income that has been deposited into the checking account.

If this step makes the individual resource eligible, no further action is needed. If the individual remains resource ineligible, the worker should go to step two.

2. Look at the individual's outstanding checks. If a check has been written and sent to the payee, even if it has not yet been cashed, the money is not available for other purposes. Therefore, it should not be counted toward the resource limit. Verification should be obtained when necessary.

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Self-employment or educational funds retain their exclusion for the time they have been prorated as income even if the funds have been commingled.

**PREPAYMENT  
OF MORTGAGE  
OR RENT**

Prepayment of an individual's mortgage is not considered a resource. Prepayment of rent, however, will be a countable resource unless the individual cannot receive the money back under any circumstances (i.e., the lease agreement includes a no refund policy, or the landlord provides a statement that the funds will not be returned to the renter).

**PROPERTY/  
EQUIPMENT  
NECESSARY FOR  
EMPLOYMENT**

Excluded as essential for the production of earned income, unless otherwise indicated below.

See also '**Income Producing Property**'

Resources that are required as a condition of employment other than self-employment may be excluded. An employer-employee relationship must exist between the owner of the resource and the employer that requires the individual to furnish a resource as a condition of employment. Resources fitting these criteria would be entered into the eligibility system as tools of a trade. (If the resource is a vehicle, see MA 403-1.)



**NOTE:** Although a LLC may report income using Schedule C or Schedule SE, a LLC is not self-employment for eligibility purposes, and property owned by the LLC is not treated as individually-owned property---the property is owned by the LLC and the LLC is owned by the members.



In order for property to be excluded as necessary for self-employment, the owner of the property must be materially participating in the self-employment business at least 10 hours per week throughout the year, must claim the endeavor as self-employment, and, if filing income taxes, must be reporting the income on Schedule C, F or SE, the property is treated as property/equipment necessary for a self-employment business. Otherwise, the property is treated as income producing property.

Self-employment/farm resources **may** include:

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- Tools/equipment such as those needed by a carpenter, mechanic, cosmetologist, etc.
  - Stock (such as office supplies) or raw materials.
  - Personal property essential for income production.
  - Office equipment such as furniture, computers, calculators, etc.
  - Business loans for the purchase of capital assets;
  - Inventory;
  - Machinery and equipment;
  - Other items needed to produce income; and
  - Business/commercial checking account.
- X Self-employment funds that have been prorated as income retain their exclusion for the time they have been prorated as income (even if the funds have been commingled).
- X Funds contained in a business/commercial checking account that have not been prorated as income may also be excluded (i.e., business working capital, business loans, etc.)
- X Funds that have not already been prorated as income, which are diverted from a business account to cover personal expenses, must be counted as earned income to the applicant/recipient.

A 'grace' period can be established for excluding the resources due to temporary inactivity in the trade or business. The grace period during which time the specific business equipment can be excluded is up to one year.

The applicant/recipient will have to actively return to the same trade or business within one year from the month he/she was no longer engaged in the trade/business. If the applicant/recipient does not return to the business, the excluded resource(s) must be counted toward the resource limit.



No exclusions will be applied to property a filing or assistance unit does not own, nor will any exclusion apply as to use of such property except by owners who are members of the filing or assistance unit. Therefore, property owned by a partnership, incorporated business, LLC or other business arrangements may not be excluded as necessary for self-support because the property is owned by the business, not the filing/assistance unit member(s).

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**PROPERTY IN PROBATE**

Excluded due to being inaccessible. Set an alert to determine ownership interest after probate. Case notes must be entered explaining why the property is considered inaccessible, including institutional Medicaid cases where the deceased is the community spouse. See also MA 906-1.

**RESOURCES USED AS COLLATERAL**

If an otherwise accessible liquid or non-liquid resource has been used as collateral on a personal or business loan, only the equity value of that resource will be counted as a resource.

Example: Household has used a certificate of deposit (CD) valued at \$4,000 as collateral for a loan of \$3,000. They are prohibited from cashing in the CD during the duration of the loan. The CD's countable value is its equity value (fair market less encumbrances). Therefore, the equity value of the CD is \$1,000 that is counted toward the resource limit. (In this case, the CD's equity value is considered accessible as the household could default on the loan and receive the remaining balance of the CD).

If, however, the CD had restrictions placed on it that prohibited the household from cashing it out, the total value of the CD is considered inaccessible and is excluded as a resource.

**RETIREMENT ACCOUNTS/ PENSION PLANS**

A retirement account or pension plan is an investment account intended to provide income at retirement. The equity value is the cash value minus any early withdrawal penalty.

Determine the net value of a retirement account/IRA via a detailed breakdown from the institution holding the deposit. The breakdown must include the gross deposit, and individually identify any/all deductions and penalties that would be deducted from the gross if the funds were withdrawn.

Applicants and recipients are required to exercise any available options to receive periodic payments from retirement accounts that are excluded as resources.

**Employment-related Retirement Accounts:** Most employment-related retirement accounts cannot be

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accessed until the employee is no longer employed with that particular business or entity. While an individual continues employment, the funds are inaccessible. Code 'MR' on FIAC.

The funds become **accessible upon termination of employment**, and therefore countable, even though the funds may not be issued for a length of time. Code: 'IR' on FIAC.

Retirement accounts owned by either spouse are countable resources (if available, as above) for resource assessments, but are excluded when owned by an ineligible spouse (non-institutional coverage) or by a deemed parent.

An applicant/recipient is required to exercise the available option to receive periodic payments from retirement accounts. If receipt of periodic payments renders the principal inaccessible as a lump sum, the account principal is then excluded.

**Individual Retirement Account (IRA)**: Funds held in Individual Retirement Accounts are considered accessible to the applicant/recipient or community spouse. Count the equity value--cash value minus any early withdrawal penalty. Code 'IR' on FIAC.

IRA funds owned by an ineligible spouse (for non-institutional coverage) or deemed parent are excluded from the resource determination. IRA funds owned by a community spouse are considered countable and accessible when determining a Community Spouse Resource Maintenance Allowance and subsequent resource eligibility.

**Keogh Plans**: Keogh plans are considered accessible and counted as resources to the applicant/recipient or community spouse even if the filing unit is not actually accessing the funds. (FIAC code: 'PE')

Keogh plans are countable resources in determining Community Spouse Resource Maintenance Allowance and subsequent resource eligibility, but are not countable resources when owned by an ineligible spouse (non-institutional coverage) or by a deemed parent.

There is no requirement to view the contents of an

## **SAFETY**

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## DEPOSIT BOX

individual's safety deposit box. It is appropriate to ask what the contents are and request verification. The eligibility case manager should only view the contents if that is the applicant's/ recipient's preference over bringing the documents to the OPA for verification. The contents are listed in system as appropriate.

## SALE OF A RESOURCE

If an excluded or countable resource is sold, the proceeds remain an excluded or countable resource in the month of sale. The resource has simply changed form. For example, if an excluded resource, i.e., the primary vehicle, is sold, the cash is considered an excluded resource for the month of sale. The following month, any proceeds remaining are considered a countable resource (i.e., cash-on-hand, savings account, etc.).

Proceeds from the sale of the applicant's/recipient's home will be excluded for three months after the month of sale if the individual indicates an intention to purchase another home within that time period. Proceeds can be in the form of a lump sum or a down payment and installment payments on a contract, as long as the entire amount is used toward the purchase of a replacement home.

If a self-employment resource is sold, see MA 503-1, 'Capital Gain or Loss'.

## SAVINGS ACCOUNT

Countable. If the current month's income has been deposited into the account, it must be excluded when determining the current value of the account. See also 'Joint Accounts' and 'Commingled Funds', MA 401-1.

## SECURITY DEPOSITS

Security deposits on rental property or utilities are excluded. This exclusion applies to both landlords and tenants.

## SETTLEMENTS & RESTITUTION PAYMENTS

**Agent Orange:** Payments made under the Agent Orange Compensation Act (P.L. 101-201) are excluded. However, P.L. 102-4, Agent Orange Act of 1991, authorized veterans' benefits to some veterans with service-connected disabilities resulting from exposure to Agent Orange. These VA payments are countable.

**Asbestos:** Funds received from an asbestos settlement or lawsuit are countable the earlier of when available or when received.



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**Factor VIII or IX Concentrate Blood Products Litigation, MDL 986 (No. 93-C-7452, Northern District of Illinois):**

Settlement payments as a result of the class action lawsuit to hemophilia patients infected with HIV (Human Immunodeficiency Virus) through blood plasma products are excluded.

**Nazi Persecution Victims:** Restitution made to individuals because of their status as victims of **Nazi Persecution** under P.L. 103-286 is excluded.

**Radiation Exposure:** Radiation Exposure Compensation Act payments are excluded. (P.L. 101-425)

**Spina Bifida:** Payments made to children of Vietnam veterans for disabilities resulting from spina bifida are excluded. (P.L. 104-204)

**Susan Walker V. Bayer Corporation, et al, 96-C-5024 (Northern District of Illinois):** Payments made from any fund established pursuant to this class settlement and payments made pursuant to a release of all claims in a case that was entered into in lieu of the class settlement and that was signed by all affected parties in such case on or before December 31, 1997 are excluded.

**Wartime Relocation of Civilians:** Payments of "Wartime Relocation of Civilians" made to certain U.S. citizens of Japanese ancestry, resident Japanese aliens, and certain eligible Aleuts under Title I of PL 100-383 or the Civil Liberties Act of 1988 are excluded.

**STOCKS**

Stocks and mutual fund shares are countable, unless otherwise excluded.

**NOTE:** Ownership in a 'close' or 'family corporation' in which a no-sell agreement has been made among the stockholders (when verified in writing by the other stockholders) results in the stock being excluded as inaccessible.

**TAX REFUND/  
CREDIT**

Tax refunds and credits are treated as follows by source:

**Earned Income Tax Credit (EITC):** EITC may be received either as an advance payment or as a refund, and is

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excluded as a resource in the month received and the month following receipt.

**Child Tax Credit:** A child tax credit is a refundable tax credit that families may be eligible to receive. Any refund received as a result of taking the additional child tax credit is excluded as a resource in the month received and the month following receipt.

**Renters/Homeowners Credit:** Tax refunds/credits received as a result of this tax provision are considered reimbursements, and are excluded as income, and are countable as a resource in the month following receipt.

**Federal/State Income Tax Refund:** Regular income tax refunds are treated as reimbursements--excluded as income when received, and countable as resources in the months following receipt.

## TRAILERS

All trailers, including 5th wheels, are countable unless otherwise excluded (e.g., home, income producing, etc.).

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